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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/035,650	12/28/2001	Lisa Bushman	KCC 4801 (K. C. No. 16,90	4610
321	7590	06/30/2004	EXAMINER	
SENNIGER POWERS LEAVITT AND ROEDEL ONE METROPOLITAN SQUARE 16TH FLOOR ST LOUIS, MO 63102			STEPHENS, JACQUELINE F	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 06/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/035,650

Applicant(s)

BUSHMAN ET AL.

Examiner

Jacqueline F Stephens

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/16/03, 3/21/02</u> | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1 are rejected under 35 U.S.C. 102(e) as being anticipated by Van Gompel et al USPN 6702801.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

As to claims 1 and 3, Van Gompel discloses an absorbent article comprising: an outer cover adapted to stretch upon application of a load by a first amount; a liquid and gas permeable bodyside liner defining a bodyfacing surface (col. 5, lines 39-40 and col.

7, lines 35-38) and being generally superposed and coextensive with the outer cover (Figures 2A and 2B), the bodyside liner being adapted to stretch upon application of the load by a second amount; an absorbent body located between the bodyside liner and the outer cover and generally movable with the outer cover upon stretching of the outer cover; and said first amount of stretch of the outer cover being greater than said second amount of stretch of the bodyside liner whereby a gap is formed between the bodyside liner and the absorbent body facilitating the flow of air and vapor through the bodyside liner in a loaded condition of the absorbent body (col. 11, lines 38-41).

As to claim 22, the article is free of material on the side of the bodyside liner opposite the absorbent body and between the bodyside liner and the absorbent body (Figures 2A and 2B).

3. Claims 1-11, 12, 13, 18-26, 28-30, and 35-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Enloe USPN 4895568.

As to claims 1, 3, and 23, Enloe discloses an absorbent article comprising: an outer cover adapted to stretch upon application of a load by a first amount; a liquid and gas permeable bodyside liner 14 defining a bodyfacing surface and being generally superposed and coextensive with the outer cover (Figures 1, 3, and 5), the bodyside liner being adapted to stretch upon application of the load by a second amount; an absorbent body located between the bodyside liner and the outer cover and generally movable with the outer cover upon stretching of the outer cover; and said first amount of

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stretch of the outer cover being greater than said second amount of stretch of the bodyside liner whereby a gap is formed between the bodyside liner and the absorbent body facilitating the flow of air and vapor through the bodyside liner in a loaded condition of the absorbent body (Figures 3, 5, and 6). The extensibility of the bodyside liner is provided by a plurality of cords (Figure 1).

As to claim 2, Enloe does not disclose the backsheet is extensible, therefore, the bodyside liner is relatively more resilient when stretched than the outer cover.

As to claim 4, the suspension is capable of retracting the bodyside liner subsequent to stretching of the bodyside liner. These limitations are directed to an intended use of the article. Intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). If the prior art structure is capable of performing the intended use, then it meets the claim limitations.

As to claim 5, Enloe discloses the suspension comprises at least one elastic cord located between the bodyside liner and the absorbent body, the elastic cord being stretched axially upon stretching of the bodyside liner (Figures 1 and 5 and col. 9, lines 3-6).

As to claim 6, Enloe see Figure 3.

As to claims 7 and 24, Enloe discloses the garment including an anterior region, a posterior region and a crotch region disposed longitudinally there between, the anterior region, posterior region and crotch region being integrally formed and configured when worn to define a central waist opening and a pair of leg openings (Figure 1), the crotch region extending generally laterally between said leg openings and wherein the cord extends lengthwise generally parallel to line extending from the anterior region to the posterior region (Figure 3).

As to claims 8 and 25, Enloe discloses the cord is attached to the bodyside liner by adhesive (col. 9, lines 14-16).

As to claims 9 and 26, see Figure 1.

As to claims 11-13 and 28-30, see col. 10, lines 10-12.

As to claims 18-21 and 35-38, see col. 5, lines 22-25.

As to claims 22 and 39, see Figure 5.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 14-17 and 31-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Enloe USPN 4895568.

As to claim 14-17 and 31-34, Enloe does not specifically disclose percentage the bodyside liner will stretch at 50% of its maximum extension upon application of a specified load. However, Enloe teaches the elastic members should exhibit sufficient elongation and contracting force so as not to exhibit undesired bunching (col. 10, lines 6-21). One of ordinary skill in the art would be able to determine through routine experimentation the ideal level of stretch for a desired load for a specific use.

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7. Claims 10 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Enloe USPN 4895568 in view of Pearce et al. USPN 5403267.

Enloe discloses the present invention substantially as claimed. Enloe does not disclose the cord is made of material selected from a group including a styrene-butadiene elastomer and a spandex fiber in the form of continuous microfilaments. Pearce discloses a bandage using a styrene-butadiene elastomer and a spandex fiber in the form of continuous microfilaments for the benefit of providing an elastomeric yarn that is not subject to unacceptable weakening of the product (Pearce col. 2, lines 14-31). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the cords of Enloe with a styrene-butadiene elastomer and a spandex fiber in the form of continuous microfilaments for the benefits disclosed in Pearce.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (703) 308-8320. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703)305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jacqueline F Stephens
Examiner
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A handwritten signature in black ink, appearing to be 'JS' with a stylized flourish.

June 26, 2004